

### **Claim Rejections under 35 USC § 103**

Claims 1-3 were rejected under 35 USC § 103 over Liberti et al (US 5,466,574) in view of Kilcon et al (US 6,190,619)

Applicant's undersigned representative wishes to thank the examiner for the personal interview on May 10, 2005 and the constructive suggestions that the examiner and supervisor have made with respect to applicant's proposed response to the office action. Accordingly, based upon these discussions and in order to advance the prosecution of the instant application, and directly responsive to the claim rejection in the outstanding Office Action, applicant has amended claims 1-3 to incorporate the importance of the annular space more fully.

The present invention comprises more than the combination of Liberti et al and Kilcoin. So while Liberti teaches a magnetic separator with an external high gradient magnetic field around a container having baffles to restrict the passageway of the particles as they migrate toward the inner surface, by combining Kilcoin's plunger one would not appreciate the need for optimizing the annular space, the volume within the annular space, and the time the magnetic particles spend within the annular space. To ensure separation of the particles and their collection along the inner surface of the container, the prior art would have to understand that optimized annular space and plunger movement is needed to prevent loss of the attached particles by factors, such as, turbulence (page 11; para 0111 and page 14, para 0133- see last sentence). This is especially important for weakly magnetic targets of cells where there is a low density of magnetic labeling (page 14; para 0135), and there is a low number of magnetic targets in solution. It is only with the hindsight of the present invention that someone in the art would combine Liberti and Kilcoin in such a way as to provide a magnetic separator described in the present invention. Accordingly, a novel physical distinction of the present invention, not appreciated by the prior art, is the inclusion of an optimal annular space in claims 1-3.

Accordingly, applicant respectfully requests reconsideration of the subject application with these newly amended claims, and submits that, after consideration thereof, this application should be deemed to now be in condition for allowance. Such action, and passage of the application to issuance, is therefore earnestly solicited.

Yours Very Respectfully,



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